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ATTORNEYS FOR PLAINTIFF JOSH CLARK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSH CLARK, an individual,

Plaintiff,

vs.

METROMILE INSURANCE
SERVICES LLC, and DOES 1-
10,

Defendants.

CASE NO. 15-cv-4881

COMPLAINT FOR

**(1) VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, *ET SEQ.*; 47 C.F.R. § 64.1200
ET SEQ.;**

**(2) NATIONAL DO NOT CALL
LIST VIOLATION; 47 U.S.C. §
227(c)(5); 47 C.F.R. § 64.1200(c)(2);
(3) FAILURE TO IDENTIFY; 47
U.S.C. § 227(b)(3); 47 C.F.R. §
64.1200(b)(1);**

**(4) FAILURE TO PROVIDE OPT-
OUT; 47 U.S.C. § 227(b)(3); 47
C.F.R. § 64.1200(b)(2)-(3);**

**(5) TELEMARKETING WITHOUT
PRIOR EXPRESS WRITTEN
CONSENT; 47 U.S.C. § 227(b)(3); 47
C.F.R. § 64.1200(a)(2)**

JURY TRIAL DEMANDED

1 Plaintiff Josh Clark ("Plaintiff") alleges the following upon
2 information and belief and personal knowledge:

3 NATURE OF THE CASE

4 1. Plaintiff seeks damages and any other available legal or
5 equitable remedies resulting from the illegal actions of Metromile
6 Insurance Services LLC, and other defendants presently unknown
7 ("Defendants"), in negligently, knowingly, willfully, and/or
8 intentionally causing an automatic dialer to dial Plaintiff's cellular
9 phone line and negligently, knowingly, willfully, and/or intentionally
10 using a pre-recorded voice message in the inception of the same phone
11 calls in violation of the Telephone Consumer Protection Act, 47 U.S.C.
12 § 227 *et seq.*, ("TCPA"), thereby violating Plaintiff's federal statutory
13 rights, and invading his right to privacy, without his express written,
14 implied, and/or oral consent, despite Plaintiff's registration of his
15 phone number on the National Do Not Call List at all times. All calls
16 made by Defendants were for telemarketing purposes and in violation
17 of the provisions of 47 C.F.R. § 64.1200, *et seq.*

18 2. Congress enacted the Telephone Consumer Protection Act
19 in 1991 to "protect the privacy interests" of consumers in response to
20 the "increasing number of consumer complaints" regarding
21 "telemarketing calls and communications" made to both residential and
22 wireless phones.¹ Today, over 91% of American adults own cellular
23 phones.² Over 39% of adults live in wireless *only* homes with no
24 landline.³

25
26 ¹ Senate Report No. 102-178, October 8, 1991, 1991 U.S.C.C.A.N. 1968; *Id.* at
27 1969; see, also PL 102-243, December 20, 1991, 105 Stat 2394.

28 ² See, <http://www.pewresearch.org/fact-tank/2013/06/06/cell-phone-ownership-hits-91-of-adults>.

³ See, <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>

1 3. The TCPA specifically prohibits the use of automatic dialing
2 machines to contact consumers on their cellular phones without the
3 express prior consent of the called party. (47 U.S.C. § 227(b), *et seq.*)
4 The TCPA also specifically prohibits the use of pre-recorded voice
5 messages in telephone calls to cellular phones without the called
6 party's express prior consent. (*Ibid.*)

7 4. The TCPA further prohibits a company from using
8 automatic dialing machines and/or pre-recorded voice messages
9 without employing rules, training and procedures to document and
10 avoid calls to the wrong party and provide appropriate consumer opt-
11 out methods to prevent future calls. (47 C.F.R. § 64.1200, *et seq.*)

12 5. Defendants knowingly and willfully caused an autodialer to
13 dial Plaintiff's cellular phone and/or used a pre-recorded voice message
14 in telephone calls to Plaintiff's cellular phone, and failed to comply with
15 the regulatory scheme under 47 C.F.R. § 64.1200, *et seq.*, throughout
16 the four years prior to the filing of this Complaint.

17 6. Defendants dialed Plaintiff's cellular phone using the
18 number 626-593-6849, leaving the following message, and similar
19 versions thereof:

20 Hi my name is Jeremiah and I'm calling on behalf
21 of Metro Mile. We'd love to answer any questions
22 you might have and to show you what we can
23 offer you as a car insurance company. Please give
24 me a call back at 6503824742. If you don't catch
25 me feel free to leave me a voice mail and I'll call
26 you as soon as possible. Again, my name is
 Jeremiah calling with Metro Mile and my number
 is 6503824742.

27 7. Plaintiff never consented, either implicitly or explicitly, to
28 be contacted by Defendants in any form, let alone through the use of an

1 automatic dialer and/or pre-recorded voice message for telemarketing
2 purposes.

3 8. At all times, Plaintiff's number was registered in the
4 National Do Not Call (DNC) list. None the less, Defendants dialed
5 Plaintiff for telemarketing purposes on at least the following occasions:
6 April 14, 2015; April 16, 2015; April 21, 2015; May 14, 2015.

7 9. Defendants further violated the TCPA by failing to comply
8 with its requirement that telemarketers must identify the calling
9 entity and that whenever a live sales representative is not available
10 to speak with the person answering the call, within two (2) seconds
11 after the called person's completed greeting, the telemarketer or the
12 seller must provide:

13 (A) A prerecorded identification and opt-out message that is
14 limited to disclosing that the call was for "telemarketing
15 purposes" and states the name of the business, entity, or
16 individual on whose behalf the call was placed, and a
17 telephone number for such business, entity, or individual
18 that permits the called person to make a do-not-call request
19 during regular business hours for the duration of the
20 telemarketing campaign; provided, that, such telephone
21 number may not be a 900 number or any other number for
22 which charges exceed local or long distance transmission
23 charges, and

24 (B) An automated, interactive voice- and/or key press-
25 activated opt-out mechanism that enables the called person
26 to make a do-not-call request prior to terminating the call,
27 including brief explanatory instructions on how to use such
28 mechanism. When the called person elects to opt-out using
such mechanism, the mechanism must automatically record
the called person's number to the seller's do-not-call list and
immediately terminate the call. (47 C.F.R. § 64.1200.)

1 themselves to jurisdiction by knowingly and/or willfully violating the
 2 TCPA within this judicial district by contacting Plaintiff on his cellular
 3 phone.

4 PARTIES

5 18. Plaintiff is a natural person who resided in Los Angeles
 6 County at the time of the violations.

7 19. Defendant Metromile Insurance Services LLC, is a
 8 California corporation that has availed itself to the jurisdiction of
 9 California and this Court by virtue of its local, international, and
 10 online business operations and by transmitting telephone calls that
 11 violate the TCPA to Plaintiff's cellular phone while he resided in Los
 12 Angeles.

13 20. Plaintiff is unaware of the true names and capacities of the
 14 Defendants sued herein as DOES 1-10, who are currently unknown to
 15 Plaintiff, who therefore sues such Defendants by fictitious names.

16 21. All of the above named Defendants, and their subsidiaries,
 17 agents, officers, directors, and managing agents, are legally responsible
 18 for the allegations and damages alleged herein. Plaintiff will seek leave
 19 to amend the Complaint to reflect the true names and capacities of the
 20 DOE defendants when such identities become known.

21 FIRST CAUSE OF ACTION

22 *Violations of the Telephone Consumer Protection Act*

23 *47 U.S.C. § 227 et seq.; 47 C.F.R. § 64.1200 et seq.*

24 22. Plaintiff repeats and incorporates by reference into this
 25 cause of action each and every allegations set forth in the complaint.

26 23. The foregoing acts and omissions of Defendants constitute
 27 numerous and multiple violations of the TCPA, including, but not
 28

1 limited to, each and every one of the provisions of 47 U.S.C. § 227 *et*
 2 *seq.*

3 24. The foregoing acts and omissions of Defendants violate 47
 4 U.S.C. § 227(b), providing:

5 “Restrictions on use of automated telephone equipment

6 (1) Prohibitions. It shall be unlawful for any person within
 7 the United States, or any person outside the United States if
 8 the recipient is within the United States—

9 (A) to make any call (other than a call made for
 10 emergency purposes or made with the prior express
 11 consent of the called party) using any automatic
 12 telephone dialing system or an artificial or prerecorded
 13 voice—

14 . . .

15 (iii) to any telephone number assigned to a paging
 16 service, cellular telephone service, specialized
 17 mobile radio service, or other radio common
 18 carrier service, or any service for which the called
 19 party is charged for the call;

20 (B) to initiate any telephone call to any residential
 21 telephone line using an artificial or prerecorded voice
 22 to deliver a message without the prior express consent
 23 of the called party, unless the call is initiated for
 24 emergency purposes or is exempted by rule or order by
 25 the Commission under paragraph (2)(B);
 26 (47 U.S.C.A. § 227(b).)

27 25. Defendants further violated the TCPA by effectuating
 28 telemarketing calls to Plaintiff’s “residential telephone” under the
 meaning of 47 C.F.R. § 64.1200(c)-(d). Defendants further violated the
 TCPA by failing to comply with each and every provision of 47 C.F.R. §
 64.1200., *et seq.* As a result of Defendants’ violations, Plaintiff is
 entitled to an award of either \$500.00 or \$1,500.00 in statutory

1 damages for each and every violation, pursuant to 47 U.S.C. §
 2 227(b)(3), plus actual damages according to proof.

3 SECOND CAUSE OF ACTION

4 *Do-Not Call List Violation*

5 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2)

6 26. Plaintiff repeats and incorporates by reference into this
 7 cause of action each and every allegations set forth in the complaint.

8 27. Defendants further violated the TCPA by failing to institute
 9 procedures to comply with the TCPA and the National Do Not Call
 10 Registry, including failing to include a viable opt-out system for
 11 consumers and failing to properly identify themselves. Defendants do
 12 not maintain a written policy for compliance and do not properly train
 13 their personnel. (47 C.F.R. §64.1200 *et seq.*)

14 28. Defendants further violated the TCPA by failing to comply
 15 with each and every provision of 47 C.F.R. § 64.1200., *et seq.* As a
 16 result of Defendants' violations, Plaintiff is entitled to an award of
 17 either \$500.00 or \$1,500.00 in statutory damages for each and every
 18 violation, pursuant to 47 U.S.C. § 227(c), plus actual damages
 19 according to proof.

20 THIRD CAUSE OF ACTION

21 *Failure to Identify Calling Party*

22 47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(b)(1)

23 29. Plaintiff repeats and incorporates by reference into this
 24 cause of action each and every allegations set forth in the complaint.

25 30. Defendants further violated the TCPA by failing to institute
 26 procedures to comply with the TCPA and the National Do Not Call
 27 Registry, including failing to include a viable opt-out system for
 28 consumers and failing to properly identify themselves. Defendants do

1 not maintain a written policy for compliance and do not properly train
 2 their personnel. (47 C.F.R. §64.1200 *et seq.*) Defendants thus violated
 3 the TCPA by calling Plaintiff despite his registration on the Do Not
 4 Call List at all times. (47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(b)(1).)

5 31. Defendants further violated the TCPA by failing to comply
 6 with each and every provision of 47 C.F.R. § 64.1200., *et seq.* As a
 7 result of Defendants' violations, Plaintiff is entitled to an award of
 8 either \$500.00 or \$1,500.00 in statutory damages for each and every
 9 violation, pursuant to 47 U.S.C. § 227 *et seq.*, plus actual damages
 10 according to proof.

11 **FOURTH CAUSE OF ACTION**

12 ***Failure to Provide Opt-Out Mechanism***

13 **47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(b)(2)-(3)**

14 32. Plaintiff repeats and incorporates by reference into this
 15 cause of action each and every allegations set forth in the complaint.

16 33. Defendants further violated the TCPA by failing to institute
 17 procedures to comply with the TCPA, including failing to include a
 18 viable opt-out system for consumers and failing to properly identify
 19 themselves. (47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(b)(2)-(3).)
 20 Defendants do not maintain a written policy for compliance and do not
 21 properly train their personnel. (47 C.F.R. §64.1200 *et seq.*)

22 34. Defendants further violated the TCPA by failing to comply
 23 with each and every provision of 47 C.F.R. § 64.1200., *et seq.* As a
 24 result of Defendants' violations, Plaintiff is entitled to an award of
 25 either \$500.00 or \$1,500.00 in statutory damages for each and every
 26 violation, pursuant to 47 U.S.C. § 227, *et seq.*, plus actual damages
 27 according to proof.

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1 **FIFTH CAUSE OF ACTION**

2 ***Telemarketing Without Prior Express Written Consent***

3 **47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(a)(2)**

4 35. Plaintiff repeats and incorporates by reference into this
5 cause of action each and every allegations set forth in the complaint.

6 36. Defendants further violated the TCPA by dialing Plaintiff
7 for telemarketing purposes without Plaintiff's prior express written
8 consent. (47 U.S.C. § 227(b)(3); 47 C.F.R. § 64.1200(a)(2).) Defendants
9 do not maintain a written policy for compliance and do not properly
10 train their personnel. (47 C.F.R. §64.1200 *et seq.*)

11 37. Defendants further violated the TCPA by failing to comply
12 with each and every provision of 47 C.F.R. § 64.1200., *et seq.* As a
13 result of Defendants' violations, Plaintiff is entitled to an award of
14 either \$500.00 or \$1,500.00 in statutory damages for each and every
15 violation, pursuant to 47 U.S.C. § 227, *et seq.*, plus actual damages
16 according to proof.

17 **PRAYER FOR RELIEF**

18 38. WHEREFORE, Plaintiff requests judgment against
19 Defendants and for the following:

- 20 I. As a result of Defendants' violations of 47 U.S.C. §
21 227, *et seq.*, Plaintiff is entitled to and requests \$500
22 in statutory damages per violation, or \$1500 in
23 statutory damages per violations that were at least
24 willful or knowingly committed;
- 25 II. For Defendants to be enjoined from engaging in
26 further violations of 47 U.S.C. § 227, *et seq.*;
- 27 III. For actual damages according to proof;
- 28 IV. For costs;

1 V. And for any other relief that the Court deems just.

2
3 June 27, 2015

By */s/Nathaniel Clark*

4 Nathaniel Clark, Esq.

5 Seaton Tsai, Esq.

6 *ATTORNEYS FOR PLAINTIFF JOSH CLARK*